IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 113 OF 2005

With

CIVIL APPLICATION NO. 4436 OF 2005
In
SECOND APPEAL NO. 113 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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MESSRS GANESH CORPORATION - Appellant(s)
Versus
GUJARAT VIDYUT BOARD & ORS. - Respondent(s)

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Appearance :
MS. SNEHA A. JOSHI for Appellant(s) : 1,
MS. MAYA S. DESAI for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 16/11/2006

ORAL JUDGMENT

1. The appeal is ***admitted*** for hearing on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the two Courts below were justified in deciding the merits of the matter when it was positively held by both the Courts that the learned Civil Judge had no pecuniary jurisdiction to entertain the suit and whether after holding that the learned Civil Judge (J.D.) had no jurisdiction, was he required to proceed under the provisions of Rule 10, Order VII of the Code of Civil Procedure or could dismiss the suit on merits?

With the consent of the parties, the matter is finally heard.

2. The plaintiff, after receiving a supplementary bill, filed Regular Civil Suit No.50 of 1987 in the Court of the learned Civil Judge (J.D.). It was submitted by the plaintiff that the suit was not maintainable before the learned Civil Judge (J.D.) as the total value of the suit was beyond Rs.50,000/- because the plaintiff was challenging the validity of the bill for an amount of Rs.49,463/- and was also seeking damages to the tune of Rs.5,500/-.

3. The learned Counsel for the appellant submits that once the Court comes to a conclusion that it has no pecuniary jurisdiction to entertain the suit, then, it cannot proceed with the merits of the matter and in accordance with Rule-10 of Order-VII of the Code of Civil Procedure (hereinafter referred to as `the Code' for short), it has to return the plaint for proper presentation or if required, it may observe the procedure as provided under Rule 10A of Order VII of the Code by sending the plaint to the Court of competent jurisdiction with a direction to the plaintiff to appear in the said Court. The submission is that in a case where the Court frames an issue relating to the jurisdiction of the Court, then, such issue should be decided first and if the Court holds that it has jurisdiction to entertain the suit, then only, the Court can proceed to decide the merits. It is submitted that both the Courts have found that the learned trial Judge i.e. Civil Judge (J.D.), had no jurisdiction to entertain the suit. Despite that, they have decided the matter on merits.

4. The learned Counsel for the respondents, on the other hand, submits that though the findings of the trial Court are that it had no jurisdiction, but, this Court should look into the findings, which are recorded on the merits of the matter. It is submitted that even if the

learned Civil Judge (J.D.) had no jurisdiction in the matter, the finding relating to theft must be confirmed by this Court. Placing reliance upon a judgement of the Single Bench of this Court in the matter of ***Banuma Polytex Limited vs. Gujarat Electricity Board & Anr.*** [***1996 (1) G.L.R. 57***], it is submitted that in a case of theft, the Court should not interfere and should ask the party to approach the Appellate Committee, which consists of the experts.

5. This Court enquired from the learned Counsel for the respondents that if the Court had no jurisdiction, how it could proceed to record the findings on merits of the matter. The learned Counsel submitted that it would be correct to say that the Court could not proceed to record the findings on facts, but, then too, the High Court should look into the findings so recorded and dismiss the appeal.

6. This Court enquired from the learned Counsel for the respondents that how can a Court, especially, High Court, look into the findings if the trial Court had no jurisdiction to entertain the suit. The learned Counsel again agreed to the proposition, but, placing reliance upon the above referred judgement, she submitted that the appeal should be dismissed on merits.

7. Section 15 of the Code provides that every suit shall be instituted in the Court of the lowest grade competent to try it. In accordance with the distribution of the business made by the High Court, at the time relevant, the learned Civil Judge (J.D.) could entertain a suit, the value of which was upto Rs.50,000/- and not beyond that. The moment the value of the suit crossed the limit of Rs.50,000/-, the Civil Judge (J.D.) would not be entitled to entertain the suit because such a suit is to be filed or instituted in the Court of the lowest grade competent to try it and such Court would be the Court of the learned Civil Judge (S.D.).

8. Rule 10 of Order VII of the Code provides that “subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted”. The Court of appeal or revision may also direct after setting aside the decree passed in the suit that the plaint be returned under Sub-rule (1) of Rule 10.

8.1 Sub-rule (2) of Rule 10 provides that on return of the plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for

returning it. Such reasonings are to be noted with the date of presentation and return of the plaint to enable the plaintiff to convince the competent Court that under some legal advise or reason akin to it, he had been contesting the litigation before a Court, which had no jurisdiction.

8.2 Rule 10A of Order VII of the Code provides that in a case where the defendant has appeared, the Court is of the opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff and on such intimation, the plaintiff then may make an application to the Court that he proposes to present the plaint before a particular Court, he may ask the Court to fix a date for his appearance in the said Court and the Court, on such an application, may do so.

9. In the present case, the learned trial Judge has observed that the suit before him was not maintainable because of lack of pecuniary jurisdiction. The learned Civil Judge (J.D.) was candid in his finding that the valuation of the bill was Rs.49,463/- and the plaintiff was also claiming damages worth Rs.5,500/-. If that was so, the learned Civil Judge (J.D.) was absolutely justified in holding that the said Court had no jurisdiction.

10. Order IVX of the Code provides casting of the issues. It provides that the Court shall proceed to decide all the issues simultaneously, but, a question of law, which is not dependent on a fact finding inquiry, may be decided as a preliminary issue. In the present case, the question should have been decided as a preliminary issue, but, if that was not so done, then, the Court was obliged to record its findings on the said issue before embarking upon the merits of the matter. Be that as it may. Once the learned Civil Judge (J.D.) found that it had no jurisdiction to entertain or decide the suit, he could not record any findings on merits. The said findings recorded by the learned trial Judge have been approved by the learned first Appellate Court, but, even the learned first Appellate Court, less appreciating the explanation appended to Sub.rule (1) of Rule 10 of Order VII, did not exercise the jurisdiction vested in it and proceeded to decide the matter on merits and probably all such findings have prompted the learned Counsel for the respondents to make the submission that though the observations made by the High Court are correct, despite that the matter should be dismissed on merits.

11. Adamance of the learned Counsel for the respondents that the matter should be dismissed on merits

does not travel in accordance with law. The assertion is based on an obsession that because there is some judgement of the High Court in favour of the learned Counsel for the respondents, such judgement should be pressed into service and should lead to a final judgement in favour of the respondents.

12. Twice I had asked the learned Counsel for the respondents that if a particular Court had no jurisdiction to enter into the merits of the matter, how could the said Court enter into the merits. The learned Counsel went on referring to the book and the judgement of this Court, undaunted even by the proposition made by this Court.

13. In view of the findings recorded above, I must hold that when the learned trial Court had no jurisdiction to entertain or decide the suit, then, it could not proceed to decide on the merits of the matter. It was obliged to act in accordance with Rule-10 of Order-VII of the Code and should have asked for return of the plaint. The learned first Appellate Court was also not justified in endorsing the findings of the facts recorded by the learned trial Court, when, on the findings relating to the jurisdiction, as recorded by it, it was obliged to direct return of the plaint. The

question framed above deserves to be answered in favour of the appellant-plaintiff. All the findings recorded by the two Courts below on the merits of the matter are hereby set aside and quashed. All the proceedings, right from the institution of the suit till the final disposal by the first Appellate Court, are quashed and set aside. Instead, it is hereby directed that the learned trial Court shall ask the plaintiff that whether he wants to get the original plaint for its presentation before the appropriate Court or he wants the Court to transfer the plaint to a particular Court with a direction to the parties to appear before the said Court.

14. The appeal is allowed. The appellant would be entitled to costs quantified to Rs.3,000/- from the respondents. Let a decree be framed accordingly.

15. As the appeal is being allowed, it is hereby directed that any amount deposited by the appellant either with this Court or with the respondents under the orders of this Court be returned back to the appellant. If within fifteen days from today, the respondents do not return the amount, which they have received from the appellant, then, the appellant would be entitled to put this order into execution and recover the money, which has been paid to the respondents under the order of this

Court and the money, which was deposited under the directions of the learned trial Court.

As the main Second Appeal is allowed, Civil Application No.4436 of 2005 is disposed of.

Direct Service is permitted.

[R.S.Garg, J.]

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